



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 504

## IN THE MATTER OF ROBERT CALO

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Robert Calo ("Calo") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Calo had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on September 27, 1994, voted to find reasonable cause to believe that Calo violated G.L. c. 268A, §3.

The Commission and Calo now agree to the following facts and conclusions of law:

1. At all times here relevant, Calo was employed by the Massachusetts Highway Department ("MHD") as a civil engineer. As such, Calo was a state employee as that term is defined in G.L. c. 268A, §1.
2. Middlesex Paving Corporation ("Middlesex") is a group of affiliated companies doing business in Massachusetts. Middlesex performs a variety of construction services including maintenance and street paving. A substantial portion of Middlesex's business consists of state contracts.
3. As a MHD civil engineer, Calo was responsible for supervising and inspecting work performed by state contractors, including Middlesex.
4. During 1992, Middlesex successfully bid for MHD contracts valued at over \$28 million. These contracts were awarded to Middlesex as the lowest qualified bidder.
5. On December 19, 1992, Middlesex hosted a Christmas party at the Marriott Long Wharf Hotel in Boston. The explicit purpose of the party was to foster goodwill with employees and individuals doing business with Middlesex. The party included cocktails, dinner, entertainment and overnight hotel accommodations for certain guests.
6. Calo and his wife attended the Middlesex party and stayed overnight at the Marriott as Middlesex's guests. The cost to Middlesex was approximately \$170.
7. Section 3(b) of G.L. c. 268A prohibits a state employee from accepting anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him. Anything with a value of \$50 or more is of substantial value for §3 purposes.<sup>1/</sup>
8. By receiving \$50 or more in entertainment and hotel accommodations from Middlesex while, as a MHD civil engineer, he was supervising Middlesex's contracts, and where he had been involved in prior Middlesex contracts and was likely to be involved in future Middlesex contracts, Calo received a gift of substantial value for or because of acts within his official responsibility performed or to be performed by him.<sup>2/</sup> In so doing, Calo

violated G.L. c. 268A, §3(b).<sup>3/</sup>

9. The Commission is aware of no evidence that the entertainment referenced above was provided to Calo with the intent to influence any specific act by him as a MHD civil engineer or any particular act within his official responsibility. The Commission is also aware of no evidence that Calo took any official action concerning any Middlesex contracts in return for the gratuities. However, even though the gratuities were only intended to foster official goodwill, they were still impermissible.<sup>4/5/</sup>

10. Calo fully cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Calo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Calo:

(1) that Calo pay to the Commission the sum of three hundred and forty dollars (\$340.00) for violating G.L. c. 268A, §3(b);<sup>6/</sup>

(2) that Calo will act in conformance with the requirements of G.L. c. 268A in his future conduct as a state employee; and

(3) that Calo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: October 12, 1994**

<sup>1/</sup> In the past, the Commission has considered entertainment expenses in the amount of \$50 to constitute "substantial value". P.E.L. 88-1. See *Commission Advisory No. 8* (issued May 14, 1985).

<sup>2/</sup> For §3 purposes, it is unnecessary to prove that any gratuities given were generated by some specific identifiable act performed or to be performed. In other words, no specific *quid pro quo* corrupt intent need be shown. Rather, the gift may simply be an attempt to foster goodwill. It is sufficient that a public official, who was in a position to use his authority in a manner that would affect the giver, received a gratuity to which he was not legally entitled, regardless of whether that public official ever actually exercised his authority in a manner that benefitted the gift giver. See *Commission Advisory No. 8*. See also *United States v. Standerfer*, 452 F. Supp. 1178, (W.D.P.A. 1978), aff'd other grounds, 447 U.S. 10 (1980); *United States v. Evans*, 572 F.2d 455, 479-482 (5th Cir. 1978).

<sup>3/</sup> As the Commission stated in *In re Michael*, 1981 SEC 59, 68,

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may simply be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obligated to do — a good job.

<sup>4/</sup> As discussed above in footnote 2, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribe section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, however, as there was no such *quid pro quo* between Middlesex and Calo.

<sup>5/</sup> In a similar disposition agreement, Middlesex acknowledged violating §3(a) by providing the above entertainment to Calo, who as a MHD civil engineer had and would perform official acts regarding Middlesex's state contracts.

<sup>6/</sup> Calo reimbursed Middlesex the cost of the gratuity after being informed that his actions probably violated the conflict of interest law. The \$340 fine is two times the approximate value of \$170.00 in prohibited gratuities received by Calo in violation of §3.